

D. Maimon Kirschenbaum (DK-2338)
Charles E. Joseph (CJ-9442)
JOSEPH & HERZFELD LLP
757 Third Avenue
25th Floor
New York, NY 10017
Tel: (212) 688-5640
Fax: (212) 688-2548

*Attorneys for Plaintiffs and proposed
collective action and class action members*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
**ANTHONY FRATTIN on behalf of himself
and others similarly situated,**

INDEX NO: 07 CV 3383 (PAC)

Plaintiff,

v.

**WEST 44th STREET RESTAURANT LLC,
d/b/a KELLARI TAVERNA, STAVROS
AKTIPIST, and HARSHAD SHAH,**

Defendants.

-----X
DECLARATION

I, Anthony Frattin, under penalty of perjury, swear/affirm as follows:

1. My name is Anthony Frattin, and I was employed by Defendants as a server at Kellari Taverna from October 2006 until my termination in April 2007.
2. The attached transcript is a true and correct transcript of an audio recording of a conversation I had with Mr. Aktipis when I was terminated.
3. On April 27, 2007, through my counsel, I filed an action against Defendants alleging that Defendants violate several federal and state wage and hour laws.

4. I was not at work that day, which was a Friday, or for the remainder of the weekend. Mr. Aktipis had suspended me (one day before this lawsuit) through April 30, because Mr. Aktipis was upset that I refused to write fictitious reviews of Kellari on various restaurant-rating websites. I was scheduled to return to work on April 30, 2007.

5. On the evening (Sunday) of April 29th, 2007, I arrived at Kellari to view my schedule for the following week.

6. When I arrived, Mr. Aktipis took me outside, and told me that I was fired. Mr. Aktipis elaborated, "You fired yourself." When I asked Mr. Aktipis to explain this puzzling comment, Mr. Aktipis explained, "we got a nice letter from an attorney," and the termination was a result of the lawsuit that I filed.

7. Kellari is a small community, and it is likely that most, if not all Kellari servers know I was terminated in retaliation for filing this action.

8. As a result, other Kellari servers that originally intended to opt-in to this lawsuit informed me that they cannot join at this point, because they fear similar retaliation.

I swear/affirm, under penalty of perjury, that the above and foregoing information is true and correct.

Dated: June 5, 2007



Anthony Frattin

TRANSCRIPT OF CONVERSATION BETWEEN
ANTHONY FRATTIN AND STAVROS AKTIPIST

Mr. Aktipis: You fired yourself.

Mr. Frattin: I fired myself?

Mr. Aktipis: Yeah. Because we got a nice letter from your attorney.

Mr. Frattin: Yes.

Mr. Aktipis: You fired yourself.